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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,221	10/28/2005	Russell L. Couturier	10040239-3 (28579-190)	7820

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AGILENT TECHNOLOGIES INC.

INTELLECTUAL PROPERTY ADMINISTRATION,LEGAL DEPT.

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EXAMINER

NGUYEN, PHUOC H

ART UNIT

PAPER NUMBER

2143

NOTIFICATION DATE

DELIVERY MODE

04/07/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPOPS.LEGAL@agilent.com

Office Action Summary**Application No.**

10/531,221

Applicant(s)

COUTURIER ET AL.

Examiner

Phuoc H. Nguyen

Art Unit

2143

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

1. This communication is responsive to Amendment filed 01/04/2008.
2. Claims 1-7 are pending in this application. Claims 1 and 6 are independent claims. In Amendment, claims 1-2 and 6 are amended. This Office Action is made final.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Zhao et al. (U.S. 6,799,213).

Re claim 1, Zhao et al. disclose in Figures 1-5 a network load testing system (e.g. abstract) comprising: an addressable named list means to enable the generation of substantially random and unique network transaction instances comprising multiple named lists, each list having at least one variable attribute (e.g. col. 3 lines 1-10, col. 5 lines 7-18, and all tables in columns 5-6) simulative of real network traffic patterns (e.g. by components 124 and 122 in Figure 1 and col. 4 lines 48-68), the substantially random and unique network transaction instances generated by incrementing at least one uniquely

variable transaction instance (e.g. col. 3 lines 1-10, col. 5 lines 7-14, Figure 2 and corresponding to description in columns 5-6), each instance associated with a unique user class population (e.g. col. 2 lines 42-45, col. 4 lines 14-30, and col. 4 lines 40-68); addressing means operable to address the named list means (e.g. by means of query the database in col. 3 lines 1-10 and col. 8 lines 2-10), and generating means, operable to communicate with the addressing means, for generating the substantially random and unique network transaction instances simulative of real network traffic patterns (e.g. abstract, Figure 2, col. 2 lines 36-56, col. 4 lines 21-34, and col. 8 lines 17-30).

Re claim 2, Zhao et al. disclose in Figures 1-5 means to enable the generation of substantially random and unique attributes to vary a population of synthetic user attributes (e.g. Figures 4-5 and cols. 5-6), wherein the substantially random and unique attributes comprise multiple named lists, each list having at least one variable attribute (e.g. col. 4 lines 40-55).

Re claim 3, Zhao et al. further disclose in Figures i-5 the synthetic user attributes include any of URLs, hosts, security levels, authentication, ports, and headers (e.g. col. 3 lines 1-10 and Figure 5).

Re claim 4, Zhao et al. further disclose in Figures 1-5 means to enable the generation of substantially unique but substantially predictable synthetic user attributes for introducing variation into ones of a series of instances (e.g. Figures 4-5).

Re claim 5, Zhao et al. further disclose in Figures 1-5 means for generating network transaction instances in accordance with a distribution that is substantially

random but representative of realistic population loads (e.g. abstract and col. 4 lines 20-34).

Re claim 6, Zhao et al. disclose in Figures 1-5 a network load testing system (e.g. abstract and Figure 1) comprising: means for generating synthetic transaction instances, simulative of the network load presented by real users (e.g. generate a configuration as seen in Figures 4-5), in accordance with a test plan containing multiple population classes (e.g. by components 122 and 124 in Figure 1), the synthetic transaction instances comprising multiple named lists (e.g. all the tables in columns 5-6), each list having at least one variable attribute (e.g. col. 4 lines 40-55 and all tables in columns 5-6), and wherein: each of the population classes contains attributes that describe the behavior of each instance generated in association with the group (e.g. col. 4 lines 62-68, col. 5 lines 21-29, and col. 8 lines 10-18).

Re claim 7, Zhao et al. further disclose in Figures 1-5 a network testing resource application for generating, based on the test plan and the attributes contained in the population classes therein, a series of instances and a selected network protocol representative of an actual load (e.g. col. 4 lines 20-40).

Response to Amendment

5. The amendment filed 01/04/2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

The newly added limitation “the substantially random and unique network transaction instances generated by incrementing at least one uniquely variable transaction instance” is considered as new matter introduced into the disclosure since there is no support of this limitation in the original specification.

Applicant is required to cancel or clearly provide the support of this new matter in the reply to this Office Action.

Response to Arguments

6. Applicant's arguments filed 01/04/2008 have been fully considered but they are not persuasive.

a. The applicant argues in pages 7-8 for claims rejected under 35 U.S.C. 102(e) that the cited reference by Zhao fails to disclose the newly added limitations "multiple named lists, each list having at least one variable attribute simulative of real network traffic patterns, the substantially random and unique network transaction instances generated by incrementing at least one uniquely variable transaction instance, each instance associated with a unique user class population" and "the substantially random and unique attributes comprise multiple named lists, each list having at least one variable attribute" as cited in the claimed invention.

The examiner respectfully submits that the current Office action clearly addresses how the cited reference clearly discloses the newly added limitations in above wherein the database stores all difference combinations of attributes/parameters of test scenarios and a generated the test load upon the design specification input

into the database in order to select the desired test scenarios with specific attributes/parameters.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- b. U.S. Patent No. 6,587,969
- c. U.S. Patent No. 6,549,944
- d. U.S. Patent No. 6,477,483

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 571-272-3919. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Phuoc H Nguyen/
Primary Examiner, Art Unit 2143

March 30, 2008